

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	13-CR-171-2
	)	
	)	
vs.	)	
	)	
	)	
ASKIA WASHINGTON,	)	
a/k/a SKI,	)	Philadelphia, PA
	)	June 13, 2016
Defendant.	)	10:17 a.m.

TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE JOEL H. SLOMSKY  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Colloquy

3

1 (The following was heard in open court at 10:17  
2 a.m.)

3 THE COURT: Please be seated.

4 (Pause)

5 THE COURT: This is the case of United States versus  
6 Askia Washington, Criminal Number 13-171-2.

7 Mr. Washington is represented by Mark Greenberg,  
8 Esquire.

9 MR. GREENBERG: Good morning, Your Honor.

10 THE COURT: Welcome. And I note the presence of Mr.  
11 Washington in court today. Welcome.

12 THE DEFENDANT: Good morning.

13 THE COURT: And the Government is represented by  
14 Eric Henson, the Assistant U.S. Attorney. And seated with you  
15 at counsel table is Jason Santos, a special agent with  
16 Alcohol, Tobacco and Firearms.

17 MR. HENSON: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 We are here today for sentencing. On June 10th,  
20 2015, about a year ago, the defendant was found guilty by a  
21 jury on Counts 1, 2, 3 and 4 of the superseding indictment and  
22 we are here for sentencing today.

23 Count 1 charged conspiracy to commit robbery which  
24 interfered with interstate commerce.

25 Count 2 was the attempted robbery which interferes

1 with interstate commerce and aiding and abetting.

2 Count 3 was the attempted possession with intent to  
3 distribute. I'm sorry, conspiracy to possess with intent to  
4 distribute five kilograms or more of cocaine.

5 And Count 4 was the attempted possession with intent  
6 to distribute the five kilograms or more of cocaine.

7 So those are the four offenses and we're here for  
8 sentencing today.

9 And, Mr. Greenberg, any reason why we should not  
10 proceed to sentencing?

11 MR. GREENBERG: No, Your Honor, I see no reason why  
12 not.

13 THE COURT: Mr. Henson?

14 MR. HENSON: Nor I, Your Honor.

15 THE COURT: All right. Let's place Mr. Washington  
16 under oath.

17 COURTROOM DEPUTY: You can remain seated and pull up  
18 the mike, please, to you.

19 Please state your full name for the record and spell  
20 your name for the record.

21 THE DEFENDANT: Askia Washington, A-S-K-I-A,  
22 W-A-S-H-I-N-G-T-O-N.

23 COURTROOM DEPUTY: Please raise your right hand.

24 ASKIA WASHINGTON, DEFENDANT, SWORN

25 THE COURT: All right. Mr. Washington, do you

1 understand you're here for sentencing today?

2 THE DEFENDANT: Yes.

3 THE COURT: And before I continue let me just say  
4 that before I came to court I reviewed the revised presentence  
5 report dated September 10th, 2015.

6 I read the defendant's sentencing memorandum which  
7 is Document 273 in the -- in the docket. And attached to that  
8 memorandum was a letter that Mr. Greenberg had sent to the  
9 probation officer objecting to the two -- two points -- two  
10 point enhancement for the possession of a dangerous weapon.

11 Also attached was a -- a list of the classes  
12 attended by -- the certificates received by Mr. Washington  
13 while he's been incarcerated. It's now three years at the  
14 Federal Detention Center. And two of those awards were awards  
15 of distinction were -- or three of them were attached. And I  
16 note that one was an anger management class.

17 I've also reviewed the defendant's supplemental  
18 sentencing memorandum which is Document Number 275 in the --  
19 in the record.

20 And I've also read the defendant's second -- second  
21 supplemental sentencing memorandum which is Document 277 in  
22 the record.

23 And attached to this memorandum is a letter from  
24 Rashida Clover who is Mr. Washington's sister. I have read  
25 that letter.

1           And also two other certificates of completion that  
2       Mr. Washington attained while incarcerated.

3           I've also read the defendant's third supplemental  
4       sentencing memorandum. This one attaches the information with  
5       the charge of aggravated assault and I have read the -- that  
6       memorandum.

7           And I've also read the Otero case that's cited  
8       therein at 502 F.3rd, 331, a 2007 case from the Third Circuit.

9           I've also read the -- the Government's amended  
10      sentencing memorandum which is Document Number 281 in the  
11      record.

12          And I've read Document 282 also which is the  
13      Government's amended supplemental sentencing memorandum. And  
14      I'm not considering at all the prior sentencing memorandums of  
15      -- filed by the Government, 274 and 276, in the docket.

16          Has anything else been submitted that I -- I haven't  
17      referred to?

18          MR. GREENBERG: Not on behalf of Mr. Washington,  
19      Your Honor.

20          MR. HENSON: Nor on behalf of the Government, Your  
21      Honor. We did not respond to the final submission that the  
22      defendant made.

23          THE COURT: I understand.

24          Now, Mr. Washington, do you understand you have the  
25      sentencing today?

Colloquy

7

1 THE DEFENDANT: Yes.

2 THE COURT: Have you had enough time to discuss  
3 sentencing with your attorney?

4 THE DEFENDANT: Yes.

5 THE COURT: If you need more time you can have it.  
6 Do you need more time?

7 THE DEFENDANT: No.

8 THE COURT: Is there any reason why we should not  
9 proceed?

10 THE DEFENDANT: No.

11 THE COURT: All right. Now, have you reviewed the  
12 revised presentence report dated September 10th, 2015?

13 THE DEFENDANT: I'm not sure.

14 (Pause)

15 THE DEFENDANT: Oh, yes.

16 THE COURT: And you read it?

17 THE DEFENDANT: Yes.

18 THE COURT: And have you reviewed the report with  
19 your attorney?

20 THE DEFENDANT: Yes.

21 THE COURT: And did your attorney explain to you  
22 what's in the report and what it means?

23 THE DEFENDANT: Yes.

24 THE COURT: And did he answer any and all questions  
25 you may have had about the presentence report?

## Colloquy

8

1 THE DEFENDANT: Yes.

2 THE COURT: Do you need any additional time to talk  
3 to your attorney about the report?

4 THE DEFENDANT: No.

5 THE COURT: All right. Now, with respect to that  
6 report I might say that there's an objection made to the  
7 specific offense characteristic in paragraph 28 and that's the  
8 addition of two levels because a dangerous weapon was  
9 possessed.

10 And does counsel have any argument on that? From  
11 what I could see it doesn't affect the Guidelines and he did  
12 not possess that -- he was acquitted of the gun charges or at  
13 least on one charge. The other was dismissed. And that --  
14 that gun was in an Echo box in a van according to the  
15 evidence. Apparently the jury believed that it was not --  
16 that firearm at the time was not used by Mr. Washington, but  
17 I'll hear from counsel.

18 MR. GREENBERG: Your Honor, you're correct on both  
19 counts.

20 THE COURT: Huh?

21 MR. GREENBERG: You're correct on both counts. The  
22 fact of the matter is is that it does not affect the offense  
23 level and the Guideline range and Mr. Washington was acquitted  
24 of that count.

25 And even by a preponderance of the evidence there

1 was insufficient evidence to connect Mr. Washington to that  
2 firearm. I would remind the Court that factually the firearm  
3 was picked up by Mr. Berry and Mr. Johnson independently of  
4 Mr. Washington and there's no evidence in the record that Mr.  
5 Washington was present when those two individuals picked up  
6 the gun at the home of Dwight Berry's mother.

7 I think that under all the circumstances of this  
8 case it would be appropriate not to include that two level  
9 upward enhancement.

10 THE COURT: All right. Mr. Henson?

11 MR. HENSON: Your Honor, the PSR, the probation  
12 officer is correct that that enhancement under the Sentencing  
13 Guidelines should apply. The acquittal does not control.

14 The enhancements are to be found by a preponderance  
15 and the evidence is that this defendant came to this -- what  
16 he believed was going to be a home invasion robbery for drugs  
17 and guns knowing that there would be guns there and intending  
18 to use them.

19 So I believe that based on the evidence that was  
20 presented at trial the Probation Office has correctly found  
21 that by a preponderance that enhancement applies and we ask  
22 that it remain.

23 THE COURT: The -- the jury acquitted him of  
24 carrying a firearm in relation to a crime of violence and the  
25 Government withdrew the count of him being a convicted felon

1 in possession of a firearm.

2 And based upon all of the evidence presented at the  
3 trial there is a question as to whether he possessed it. He  
4 may have known about the presence of a firearm, but whether he  
5 possessed these specific weapons is a question that was raised  
6 at trial and from all indications it appeared that the jury  
7 did not believe that he possessed it. He certainly didn't  
8 carry it.

9 So I will find that the preponderance of the  
10 evidence standard is not met and that -- not met in this case,  
11 so I will ask the -- I will strike the two level enhancement  
12 that's noted in paragraph 28. I'll ask the probation officer  
13 to make that change in the presentence report.

14 Now, is there any other objection to the presentence  
15 report in terms of departures or factual corrections?

16 MR. GREENBERG: No, Your Honor.

17 THE COURT: All right. Mr. Henson?

18 MR. HENSON: The statutory mandatory minimums are  
19 incorrectly stated as to Counts 3 and 4 on page two.

20 The statutory mandatory minimum on Count 3 is 20  
21 years to lifetime imprisonment. And, accordingly --

22 THE COURT: Okay.

23 MR. HENSON: -- later in the report the defendant's  
24 liability for supervision in paragraph 87 should be a  
25 mandatory 10 years to lifetime supervision.

1 THE COURT: 10 years?

2 MR. HENSON: Yes, Your Honor.

3 THE COURT: Not five?

4 MR. HENSON: Not five. It's 10 years.

5 THE COURT: 10. All right. I know this is his  
6 second conviction, so I'll ask the probation officer to make  
7 those changes and --

8 MR. GREENBERG: Your Honor.

9 THE COURT: Yes.

10 MR. GREENBERG: Before you go on.

11 THE COURT: Yes.

12 MR. GREENBERG: As the Court knows, in one of my  
13 supplemental sentencing memorandums I objected to the increase  
14 in the statutory mandatory minimum sentence by virtue of the  
15 fact that this is not the type of case that really justifies  
16 or was envisioned by Congress to justify an increase from a  
17 mandatory minimum of 10 years to a mandatory minimum of 20  
18 years on a number of levels, including the fact that frankly  
19 this is a case where the Government aren't -- officially set  
20 the amount of cocaine that was involved in this artificial  
21 stash house robbery.

22 And to allow the Government to increase a  
23 defendant's sentencing exposure as dramatically as it has in  
24 this case and to manipulate the amount of cocaine to attain  
25 that mandatory minimum I think provides the Government with

1 unbridled discretion to manipulate sentences and was not  
2 envisioned by Congress to warrant a doubling of the mandatory  
3 minimum sentence.

4 The information that was filed in this case  
5 conceitedly was filed in advance of the trial, so time wise  
6 the information was timely filed and I'm talking about the  
7 information under 21, U.S.C., Section 851 that was the  
8 information that triggers the mandatory -- or the doubling of  
9 the mandatory minimum sentence.

10 But as the Court well knows in this case I would --  
11 I would have to imagine that when Congress passed the law to  
12 increase a mandatory minimum sentence from 10 to 20 years it  
13 was addressing major drug dealers, people who are the kingpins  
14 of drug distribution.

15 It was not envisioning a situation where the  
16 Government creates a crime like it created here of a stash  
17 house robbery and then was able to artificially set the amount  
18 of cocaine that was involved. If this case involved a half a  
19 kilogram of cocaine that induced Mr. Washington, Mr. Berry,  
20 the others, to commit the crime there would be no mandatory  
21 minimum sentence at all.

22 If the amount of cocaine was between one and five  
23 grams there would be a five year mandatory minimum that would  
24 be increased to 10 assuming there's a prior drug conviction.

25 The problem in this case and the reason why the

1 Court should not accede to the Government's request to impose  
2 a 20 year mandatory minimum sentence is that from soup to nuts  
3 this case was a contrived case. And I use that word not in --  
4 in a disparaging way, but also in a factual way.

5 It is dangerous and is reflective of why member --  
6 many members of our community don't feel that the system is  
7 fair where you have a situation that the Government can set  
8 the bar as to what the mandatory sentence is going to be by  
9 their discretion by saying, okay, on this particular day we're  
10 going to set the level at a half of kilogram of cocaine.

11 Or next week we're going to set the level at two and  
12 a half kilograms of cocaine.

13 And then two months down the road we're going to set  
14 the level at 10 kilograms of cocaine.

15 That is not the type of scenario that 851 was  
16 designed to address. That's not the type of scenario that the  
17 mandatory minimum was designed to address.

18 The mandatory minimum is designed to address real  
19 drugs that are possessed with the intent to distribute by a  
20 defendant, by people who deserve to get 20 years in jail  
21 mandatory for -- for their activity here.

22 So I would ask the Court, given the fact that under  
23 all these circumstances that you not consider this to be a  
24 mandatory sentence of 20 years.

25 I would also remind the Court that the Court has

1 disregarded the Government's sentencing submission that  
2 brought that to the attention of the Court. Ms. Maier in her  
3 presentence report set the mandatory minimum at 10 years  
4 imprisonment.

5 It was only after Mr. Astolfi filed his supplemental  
6 memorandum did the Court now have the information that the  
7 sentence should now go up to 10 years -- or 20 years mandatory  
8 minimum.

9 THE COURT: Has Mr. Henson filed?

10 MR. GREENBERG: No, he did not.

11 So in light of the fact that the Court has not  
12 considered -- and you stated on the record that you were not  
13 going to consider Government counsel's submission that were  
14 submitted by counsel prior to Mr. Henson, I would ask the  
15 Court not to impose a mandatory -- 20 year imprisonment  
16 mandatory minimum by virtue of the fact that the Government  
17 has not properly objected to the presentence report as set  
18 forth by Ms. Maier.

19 Had Mr. Henson timely filed that request or adopted  
20 Mr. Astolfi's request, which as a practical matter was not  
21 timely filed, I would remind the Court then under those  
22 circumstances and the unique circumstances of this case I  
23 would ask that you not adopt the Government's request for a  
24 mandatory minimum of 20 years.

25 MR. HENSON: Your Honor, please.

1 THE COURT: Mr. Henson?

2 MR. HENSON: Document 281 filed and signed by me on  
3 behalf of the United States at page two of seven correctly  
4 states the statutory mandatory minimum penalty.

5 There is absolutely nothing in the statute that  
6 requires the Government, once it has filed as we did here the  
7 Section 851 notice, to do anything further to oblige the Court  
8 to impose the statutory mandatory minimum penalty.

9 The Government has properly and timely in terms of  
10 this litigation brought to the Court's attention the statutory  
11 mandatory minimum that applies.

12 There is no basis to set it aside and we would ask  
13 for, as we will argue later, a Guideline sentence, but the  
14 statutory mandatory minimum remains as stated in the  
15 Government's filing in Document 281 which was submitted by me  
16 to the Court with the Court's both permission and direction.

17 THE COURT: All right. Mr. Henson, you've also  
18 filed Document Number 282. And the way I read it it's even  
19 more specific as to what the Government's position is.

20 MR. HENSON: Yes, Your Honor.

21 THE COURT: It goes into this in more detail. Do  
22 you have that in front of you?

23 MR. HENSON: I have it here, but it's in a whole  
24 group of documents. It will take a moment. Yes, Your Honor.  
25 This Document 282, again, filed with the Court's permission

1 explains why the statutory mandatory minimum applies and must  
2 be imposed in this case.

3 THE COURT: All right. The -- what -- what also has  
4 to guide the Court is, and, again, I have to follow the law as  
5 a Judge. What also guides the Court -- the Court is that in  
6 the jury verdict form, which is Document 215 in the record,  
7 containing the findings of the jury on Counts 3 and 4 the jury  
8 specifically answered an interrogatory, "Do you unanimously  
9 find that the Government proved beyond a reasonable doubt that  
10 the weight of the mixture and substance containing cocaine  
11 that Askia Washington conspired to possess with intent to  
12 distribute was five kilograms or more?"

13 And the jury said, "Yes".

14 Now, I recognize the argument made by Mr. Greenberg.  
15 Certainly there is a -- there is certainly an aspect here of  
16 the Government setting the bar, so to speak, in terms of the  
17 -- the amount of cocaine that Mr. Washington thought would be  
18 obtained when he engaged in this conspiracy to engage in the  
19 robbery of the cocaine.

20 The Court is bound to follow the law. When I became  
21 a Federal Judge I took an oath to follow the law and the law  
22 is that if you have a second conviction for these offenses,  
23 conspiracy to -- attempted possession with intent to  
24 distribute five kilograms or more of cocaine, the mandatory  
25 minimum is 20 years.

1           The -- the jury so found and set the quantity and I  
2       don't see how I have the authority to ignore what the law is  
3       and what the jury has said.

4           So at the very least based upon the facts of this  
5       case and the charges and what the jury found the Court is  
6       bound by the statutory mandatory minimum and certainly it's an  
7       argument that can be considered in the future.

8           And certainly the nature of the charge or the way  
9       that the case was prosecuted as a sting operation has some  
10      influence on what would be an appropriate sentence on Counts 1  
11      and 2, the robbery charges.

12          But I could not, Mr. Greenberg, do what you're  
13      asking me to do. I just don't think the law would in any way  
14      support it and so that -- that I could not do.

15          Now, I notice there's a lot of people in court and I  
16      want everyone here to understand just some of the factors that  
17      guides a Judge in the Federal Court in sentencing someone.

18          Sentencing is never an easy -- easy decision to  
19      make. Everyone is entitled to individual consideration who  
20      comes before the Court convicted of a crime and we do have a  
21      law. It's set forth in Title 18, United States Code, Section  
22      3553(a) and I refer to that sometimes as our sentencing law.

23          And these are the -- it lists all the factors that a  
24      Judge has to consider in determining what's an appropriate  
25      sentence in a given case.

1 I have to consider the nature and circumstances of  
2 the offense.

3 I have to consider the history and characteristics  
4 of a defendant, of the person in front of me.

5 A Court is imposed -- is required to impose a  
6 sentence sufficient, but not greater than necessary, to comply  
7 with other factors that are listed in the law.

8 That is a sentence should reflect the seriousness of  
9 the offense, promote respect for the law, afford deterrence,  
10 protect the public from further crimes by a defendant.

11 Provide a defendant with needed educational and  
12 vocational training and other correctional treatment in the  
13 most effective manner.

14 Consider the kinds of sentences that are available.

15 I also have to consider ranges that are contained in  
16 what we call our Sentencing Guidelines manual. And I have to  
17 consider any pertinent policy statements that are in the  
18 manual that have been written by the Sentencing Commission  
19 that's part of our law.

20 And I have to consider the need to avoid unwarranted  
21 sentence disparities among defendants with similar records who  
22 have been found guilty of similar conduct.

23 And I also have to consider the need to provide  
24 victims with restitution and that doesn't come into play in  
25 this case.

1 But, you know, I mention the Federal Sentencing  
2 Guidelines and these Guidelines were enacted in 1987. And  
3 before they -- before we had Sentencing Guidelines if somebody  
4 was convicted of a crime and let's say the Congress set the  
5 penalty at between zero and 10 years imprisonment a Judge had  
6 a discretion to impose whatever sentence the Judge felt was  
7 appropriate between zero and 10 years.

8 And if you had -- if two defendants were sentenced  
9 by different Judges and they were convicted of the same crime  
10 and they were otherwise alike in terms of their prior record,  
11 perhaps some other factors, one Judge might give somebody  
12 probation, another Judge might give somebody three years in  
13 jail and it was not considered fair and it is unfair. People  
14 should be treated the same.

15 So Congress created a Sentencing Commission to  
16 establish Guidelines for Judges and these Guidelines were  
17 enacted in 1987. In many ways they are a product of a lot of  
18 study and a lot of data that has been submitted to make sure  
19 the Guidelines are fair and up-to-date.

20 And I can assure you that back in 1987 this book was  
21 not as big as it is and over the years it's been amended many  
22 times.

23 And until 2005 the law was that these Guidelines  
24 were mandatory. A Judge had no discretion. If somebody was  
25 in a certain -- had an a certain offense level, oh, I'll just

1 throw out one for the sake of argument, let's say level 36.  
2 And then we -- and that's the offenses -- every offense --  
3 Federal offense is rated and there are offense characteristics  
4 that may enhance it, may lower it, et cetera.

5 But if a person had a certain offense level that was  
6 applicable to their case and then they -- the chart goes  
7 across the page and we look at the criminal history category  
8 of a defendant.

9 Depending on how -- his prior record, so I forget  
10 what I said, I think I said let's take level 36 -- offense  
11 level 36.

12 If you have no prior criminal history and this would  
13 be the first time you're convicted of a crime the offense --  
14 the Guidelines would recommend a sentence of incarceration of  
15 188 to 235 months. If you have an offense level 36 you've  
16 committed a very serious offense.

17 And if you go across the page, if you're in Criminal  
18 History Category VI, which meant you have a lot of prior  
19 convictions, you'd be in a range of 324 to 405 months.

20 So the -- the Guidelines were mandatory until 2005.  
21 A Federal Judge had no discretion. Whatever Guideline range  
22 you were in the Judge had to sentence you within that range.

23 There are ways to be taken out of the Guidelines,  
24 but, for example in this case, there are -- there are none  
25 applicable that I can see.

1           So in 2005 the Supreme Court said if these  
2       Guidelines were to be constitutional they're only advisory.  
3       They're just guidelines. They're not mandatory.

4           So these Guidelines are just one factor among all  
5       those factors that I mentioned to you that a Federal Judge has  
6       to consider in determining what's an appropriate sentence in a  
7       case.

8           And Judges were required initially to -- at  
9       sentencing to calculate the applicable Guideline that would  
10      apply to a defendant's case and then to see whether there's  
11      any departures that would apply to that Guideline that we find  
12      all within what's in this book.

13          And then after we do that we ultimately hear from  
14      the parties on whether there should be a variance from the  
15      final Guidelines -- from those Guidelines calculated after the  
16      original Guidelines set by the Court -- found by the Court and  
17      any departures are considered.

18          And that's where a lot of these factors that I've  
19      mentioned to you that a Judge has to consider come into play.

20          But, again, sentencing someone is -- is not rocket  
21      science, but Judges try to use their best discretion, their  
22      best judgment, in determining, based upon all of the  
23      information before a Judge, what's an appropriate sentence.

24          Now, given everything I've said I've already made a  
25      ruling on one thing that's in the presentence report in terms

1 of the Guidelines, but is -- there's nothing else being  
2 objected to the presentence report, Mr. --

3 MR. GREENBERG: No, Your Honor.

4 MR. HENSON: No, Your Honor.

5 THE COURT: All right. And the changes that Mr.  
6 Henson has requested I'll ask the probation officer to make.

7 Now, let me -- let me calculate the Guidelines as  
8 they're set forth in the presentence report.

9 The defendant has been convicted by a jury on Counts  
10 1, 2, 3 and 4.

11 And Counts 1 and 2 are the conspiracy to commit the  
12 robbery and Count 2 is the attempted robbery.

13 And Counts 3 and 4 are the conspiracy to possess  
14 with intent to distribute the five kilograms or more of  
15 cocaine. And Count 4 was the attempted possession with  
16 attempt to distribute the five kilogram -- kilograms or more  
17 of cocaine.

18 We have what we call grouping rules within the  
19 Guidelines.

20 Counts 1 and 2 group because the substantive  
21 offense, that is the attempt offense, was the sole object of  
22 the conspiracy.

23 And Counts 3 and 4 group, again, for the same reason  
24 because the substantive offense was the sole object of the  
25 conspiracy and this is set forth in paragraph 24 of the

1 presentence report.

2 Counts 1, 2, 3 and 4 also group together because one  
3 of the counts embodies conduct that is treated as a specific  
4 offense characteristic -- in or other adjustment to the  
5 Guideline applicable to another of the counts. Specifically  
6 Counts 1 and 2 group with Counts 3 and 4 because the defendant  
7 made a credible threat to use violence.

8 So that when we consider all this the grouping  
9 requirements in the Guidelines requires us to consider the  
10 highest offense level of the counts that group.

11 And, as noted in paragraph 27 of the presentence  
12 report, the Guideline for a violation of 21, United States  
13 Code, Section 846, that is the 846 offenses which are the drug  
14 offenses, is found in Guideline Section 2D1.1(c)(5) which  
15 provides that an offense involving more than five, but less  
16 than 15, kilograms of cocaine has a base offense level of 30.

17 The -- in count -- paragraph 29, a specific offense  
18 characteristic is that two levels are added pursuant to  
19 Guideline Section 2D1.1(b)(2) because the defendant made a  
20 credible threat to use violence.

21 So that the adjusted offense level is 32, as noted  
22 in paragraph 33, and I'll ask the probation officer to make  
23 that change.

24 Now, under another provision in this book, the  
25 Guideline book, we call it Chapter 4, there is enhancement --

1 an enhancement when a defendant was at least 18-years-old at  
2 the time of the instant offense of conviction and I've gone  
3 over the instant offense of conviction.

4 And if the instant offense of conviction is a  
5 felony, that is either a crime of violence and a controlled  
6 substance offense, and the defendant has at least two prior  
7 felony convictions of at least a crime of violence or a  
8 controlled substance offense, then the defendant is labeled as  
9 what we call a career offender and the offense level for a  
10 career offender is 37.

11 Unfortunately for Mr. Washington, he has prior  
12 convictions.

13 As noted in paragraph 40 of the presentence report  
14 he was convicted at age 23 -- and I realize he's age 36 as he  
15 sits before me today -- of criminal conspiracy, aggravated  
16 assault, carrying firearms without a license, carrying  
17 firearms in a public street place, et cetera. And it's all  
18 noted in paragraph 40 of the presentence report. He was  
19 sentenced to 12 to 24 months imprisonment and two years  
20 consecutive probation.

21 And in paragraph 41, at age 24, he was found guilty  
22 of -- or pled guilty or found guilty of manufacturing,  
23 delivering and possessing with intent to manufacture or  
24 deliver a controlled substance and for that he was sentenced  
25 to three to years imprisonment.

1           So for each of those offenses under the Guidelines  
2       he would be given three points, for a total of six points, but  
3       when a -- and in looking at his -- his prior record score and  
4       the fact that he committed the instant offense in front of me  
5       while on State parole he would have a total criminal history  
6       score of 11 which would put him in a Criminal History --  
7       History Category of V, but because he is a career offender  
8       he's placed in a Criminal History Category of VI.

9           Now, with a -- so based upon the fact that he is a  
10      career offender he is automatically placed in an offense level  
11      of 37, so that the -- as noted in paragraph 34, so that the  
12      total offense level is 37.

13          The Guideline for offense level 37, Criminal History  
14      Category VI, is 360 months to life, so that is the finding of  
15      the Court with respect to the -- to the Guidelines.

16          Now, with respect to departures, I think we've dealt  
17      with the -- with the -- I'm not sure if this is a departure or  
18      a variance argument, Mr. Greenberg, but -- on the 20 year  
19      mandatory minimum, but the Court would have to impose at least  
20      a 20 year mandatory minimum on Count -- Counts 3 and 4.

21          Now, the question is what would be an appropriate  
22      sentence on Counts 1 and 2?

23          Now, there's -- there's no other request for a  
24      departure. We're dealing with a variance at this point, is  
25      that correct?

1 MR. GREENBERG: Yes, Your Honor.

2 THE COURT: Mr. Henson?

3 MR. HENSON: We ask for no departures, Your Honor,  
4 and we --

5 THE COURT: You'll argue --

6 MR. HENSON: -- advocate a Guideline sentence.  
7 Thank you.

8 THE COURT: All right. Why don't I hear from Mr.  
9 Greenberg first?

10 MR. GREENBERG: Thank you, Your Honor.

11 Your Honor, before I make my remarks I would be  
12 remiss if I did not take the time to identify the people who  
13 have come today on behalf of Mr. Washington.

14 As the Court well knows this is the second time that  
15 many of these folks have come. The first time the case --  
16 the sentencing hearing was aborted, but nonetheless, these  
17 folks have taken the time to come back because they love and  
18 support Askia Washington.

19 And what I would like to do is just read their  
20 names. Once I read your name I would ask the Court if they  
21 will be allowed to stand up. I know two of the individuals,  
22 Mr. Washington's mother and sister, would like to address the  
23 Court.

24 And I know that there are some folks here who were  
25 not here the last time and I would ask them to stand up as

1 well. I think it's important for them as part of the  
2 community, in addition to Mr. Washington's family, that they  
3 be acknowledged if the Court has no objection.

4 THE COURT: I have no objection.

5 MR. GREENBERG: Thank you, sir.

6 Ms. Patricia Jones is Mr. Washington's mother.  
7 Would you please stand up? She was here the last time, Your  
8 Honor, as the Court recalls.

9 Monifa Munson (phonetic). She was also here the  
10 last time, Your Honor. Mr. Munson is Mr. Washington's wife.

11 Natasha Jones (phonetic) is his sister. Is she here  
12 today? Yes. She was also here the last time, Your Honor.

13 Rasheed Clover (phonetic) is his nephew. Mr. Clover  
14 was here also the last time.

15 Coleman Budd (phonetic) is his step-father. Mr.  
16 Budd was also here the last time.

17 Rashida Clover was also here, Your Honor. She is  
18 Mr. Washington's sister.

19 And Markeisha Clover (phonetic). Is he (sic) here,  
20 Mr. Clover?

21 THE DEFENDANT: Markeisha.

22 MR. GREENBERG: Markeisha Clover. Yes. She is the  
23 niece of Mr. Washington.

24 Your Honor, there are some additional folks who are  
25 here and if I could just call out your names and would you

1 please stand up.

2 Keana McClain (phonetic) is Mr. Washington's niece.

3 Zarea Weddington (phonetic) is his great niece. Ms.  
4 Weddington, are you here? Okay. There she is.

5 Jordan James is a friend, Your Honor. Mr. James,  
6 thank you for coming, sir.

7 Nathaniel Ortiz (phonetic) is another friend of Mr.  
8 Washington's. He is here, Your Honor.

9 And Milan Clover (phonetic) is a niece.

10 Now, I know there's some young ladies who are here  
11 who were not here the last time and I did not call out your  
12 name. Would you ladies please stand up? Thank you three for  
13 coming.

14 Sir, were you here the last time? Did I call your  
15 name? Would you please be good enough to stand up. Thank  
16 you.

17 Your Honor, in addition to the people I have called  
18 there are four additional people who are here. I would ask  
19 the Court to take that into consideration in reflecting the  
20 love and care that Mr. Washington enjoys which is going to be  
21 a factor in the Court's sentencing consideration by virtue of  
22 the fact that his -- his people -- his family, his friends,  
23 will be there for him upon his release and that is going to  
24 be an incredibly important factor when Mr. Washington  
25 integrates back into society after the service of his

1 sentence.

2 I know, Your Honor, that Ms. Jones, Mr.  
3 Washington's mother, and Ms. Clover, his sister, would like  
4 to say something.

5 I would ask Ms. Jones just to step up, ma'am,  
6 please, first if you'd like to say something.

7 (Pause)

8 COURTROOM DEPUTY: Right up here. Right to the  
9 podium. Just pull the mike down. I have to swear you.

10 Please -- please state your full name for the  
11 record and spell your name for the record.

12 THE WITNESS: Patricia A. Jones.

13 COURTROOM DEPUTY: Spell your last name for the  
14 record.

15 THE WITNESS:: J-O-N-E-S.

16 COURTROOM DEPUTY: Please raise your right hand.

17 PATRICIA JONES, WITNESS, SWORN

18 COURTROOM DEPUTY: Thank you.

19 THE COURT: Ms. Jones.

20 THE WITNESS: Good morning, Your Honor.

21 THE COURT: Good morning.

22 THE WITNESS: I'm really nervous. I'm here on  
23 behalf of my son. I'm nervous.

24 THE COURT: All right. Take your time. Take your  
25 time.

## Statement of Patricia Jones

30

1 THE WITNESS: Your Honor, you know, Askia -- Askia  
2 haven't been a great son in the world, but I know he's  
3 changed and --

4 (Pause)

5 MR. GREENBERG: How has he changed, Ms. Jones?

6 THE WITNESS: As far as when he was released from  
7 prison the first time he was out doing the right thing. He  
8 was really doing really good. He had acquired a business of  
9 his own.

10 He's good with children taking them to baseball  
11 games, you know. He was doing a lot of good things and how  
12 he got caught up in that situation is beyond me.

13 But I know he's been incarcerated for three years  
14 and I know in my heart I know he learned and changed. I know  
15 he has.

16 And I'm just asking -- I know he might have do some  
17 time, but if you can be as lenient as possible.

18 As far as how far he would be sent away from his  
19 family, some of us might not be able to go visit him if he's  
20 sent away too far. He has a grandmother who is older and  
21 hasn't seen him in quite some time. It would really be  
22 difficult for her to visit him.

23 I can't think of nothing else.

24 MR. GREENBERG: Thank you, Ms. Jones.

25 THE WITNESS: You're welcome.

Statement of Rashida Clover

31

1 MR. GREENBERG: Thank you for taking the time.

2 THE WITNESS: Yes.

3 THE COURT: All right. Thank you.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. GREENBERG: Thank you, Your Honor.

7 May I call Ms. Clover?

8 THE COURT: Yes.

9 (Pause)

10 THE COURT: I did read a letter also from Natasha  
11 Jones which was attached.

12 I know this is Ms. Clover. And I did refer to the  
13 letter from Rashida Clover and this is Rashida Clover.

14 MR. GREENBERG: It is indeed, Your Honor.

15 THE COURT: Right.

16 COURTROOM DEPUTY: Please state your full name for  
17 the record and spell your full name for the record.

18 THE WITNESS: Rashida Clover, R-A-S-H-I-D-A,  
19 C-L-O-V-E-R.

20 COURTROOM DEPUTY: Please raise your right hand.

21 RASHIDA CLOVER, WITNESS, SWORN

22 COURTROOM DEPUTY: Thank you.

23 THE WITNESS: Hi, Your Honor.

24 So, as you know, I sent you a couple of letters in  
25 regards to my brother, our upbringing, so I won't bore you

1 with that information again.

2 I did feel that it was important that in addition  
3 to what I sent you that you knew what my brother kind of had  
4 to go through. I've been here watching this court hearing --  
5 all of these hearings since they started.

6 I've been a part of Askia's life, you know, since  
7 we were, you know, kids watching how he's been robbed of  
8 everything since he's been a baby.

9 He's been robbed of his father before he could even  
10 know his father's name.

11 My mother, and this is not to bring my mother down,  
12 or to come at my brother or anybody else because of what they  
13 were not able to deal with in their past, but I've been on my  
14 own since 12-years-old.

15 As a teenage I had to take care of my brother, my  
16 -- his other brother that was not able to be here and my  
17 sister as a teenager. I was not equipped with what I had to  
18 take care of though. I did not have the education to do it  
19 and I didn't have the resources to do it.

20 You're sentencing somebody whose been deprived,  
21 neglected. There are days that I had to go and watch him cry  
22 because he was hungry which led me to have to get him and  
23 take care of them just being a teenager myself.

24 So I know what he's been through and I know why  
25 he's angry and I know why he was out here. My brother has

1       been through hell. We all have. There's so much more that I  
2       probably can't share here, but he's been through a raw deal.

3               I did not have a lot of time with my brother after  
4       he was arrested for years and so the last time that he came  
5       out I had three good encounters with my brother.

6               I have since been able to get my education, get the  
7       resources that I need, get the people in place that I need.  
8       I have a Master's degree. I'm a clinician.

9               The day that my brother was arrested for the final  
10      time that morning I called him as soon as I got up because I  
11      was going to have that conversation with him to go back to  
12      school and let him know that I would help him with whatever  
13      it was he needed because he was trying.

14              He came out and because he knows how I tough I am  
15      on them and because he's one of the only men in our family  
16      that even my son looks up to I wanted him to make it.

17              So when I got up that morning I called my brother  
18      and I didn't get an answer, but I was going to tell him that  
19      anything he needed I was going to be there to help him make  
20      it.

21              I watched my brother be dragged through this court  
22      system, given a raw deal. Not only was he deprived in not  
23      getting what he needed as a kid, but we're taking resources  
24      from our communities where we have children who don't have  
25      education like my brother. He's undereducated. He has no

1 diploma. He has never had a chance to get one.

2 You take somebody who has lived in poverty with no  
3 education, have people from a program or an organization,  
4 with degrees, with the resources, that they're using in our  
5 communities to pay other drug dealers to find people who are  
6 like my brother, who are limited with resources, don't have  
7 any education, to entrap them and manipulative them into a  
8 situation like this.

9 Now, Your Honor, I'm not going to go through the  
10 whole court proceeding because we all were here, but my  
11 brother had a drunk attorney who didn't listen to anything  
12 anybody was trying to tell him.

13 We heard my brother say on the video that they were  
14 showing, I don't even do this. And when he said that he  
15 meant it. He does not do this. He's been out of it. I've  
16 been on him. I have been on him so he does not do it.

17 Half of the proceeding my brother didn't even pay  
18 attention because he's undiagnosed with adult ADHD. He's had  
19 it since he's been a kid. He has not had the resources to  
20 take care of that. He has not had anybody to help him get  
21 behavior -- behavioral management treatment or anything like  
22 that.

23 I see that he did that in court -- while he was in  
24 jail, but had he had all of these resources in place before  
25 this happened it would have been more helpful. That same

1 money that we're paying drug dealers to manipulative people  
2 who in their own documents are supposed to be gang members or  
3 people who are organized and do these things, that's who they  
4 were supposed to be looking for. That's who they said that  
5 they were looking for. That's what their guideline book says  
6 that they're supposed to be looking for. Not piecing  
7 together individuals like my brother who are not out here  
8 doing what they're accusing him of doing right now. They  
9 manipulated these boys into doing that.

10 He said he does not do that. Where in your  
11 guidelines does it say once a defendant say they don't do  
12 this that you pull away from them, not keep enticing them to  
13 keep doing it?

14 So not only he is given -- given an unfair trial,  
15 but his drunk attorney failed to object when the jury even  
16 came back and asked you what was the definition of  
17 entrapment? He mentioned it. He was drunk and he was joking  
18 about it, but he mentioned it.

19 But they objected to it and you upheld that, but he  
20 did mention that and they should have been allowed to hear  
21 that. And if they had been allowed to hear that they would  
22 have seen -- because they seen it, just like everybody else  
23 that has been watching this -- seen that this is entrapment.

24 Instead of doing this to these uneducated,  
25 impoverished boys and men, give that money to somebody that

1 can help them. Give it to a therapist, a clinician or  
2 programs that can help them. I am willing to open one --  
3 anything.

4 20 years? My brother is already -- he's already  
5 spent half of his life in jail. He knows what that is about.  
6 That's not doing anything. It's not helping him. It's not  
7 rehabilitating him. It's not helping him. What he needs is  
8 education and an opportunity.

9 Your Honor, I respect anything that you're doing.  
10 I respect whatever decision that you make. I understand that  
11 you have guidelines to go by, but in that book I can't  
12 imagine that that Guideline book said for this organization  
13 to go out and entrap young men who are not organized in  
14 organized crime and sentence people for fake drugs and put  
15 their own limitations on the amount of the drugs just to give  
16 them a maximum 20 years sentence or more.

17 MR. GREENBERG: Minimum.

18 THE WITNESS: Minimum sentence.

19 I hardly think whoever created that book meant for  
20 this to happen. I feel like the system is being manipulated  
21 by that. And it's an -- it's embarrassing and it's hurtful  
22 because a lot of people are being affected by this. This is  
23 not just my brother. It's not just about my brother. This  
24 is about a lot of people in our communities that are affected  
25 by this. They really are. And it's hurtful to sit here and

1 watch this. Thank you.

2 MR. GREENBERG: Thank you, Ms. Clover.

3 THE COURT: All right. I thank Ms. Clover for her  
4 comments. Obviously, they're a product of a lot of thought  
5 and a lot of concern.

6 MR. GREENBERG: Your Honor, I've been a lawyer  
7 since 1981. I'm a part of the system. I have never heard a  
8 more eloquent indictment of the system than what I just  
9 heard.

10 Before I continue with my remarks I just want to  
11 point out two things.

12 The fact is that in this courtroom today are  
13 members of the community -- our community. There might be 20  
14 of them here. You took the time to explain to the members of  
15 our community what sentencing is about and what the process  
16 is about and how it works. You are to be commended for what  
17 you said, so -- to give our community a sense of  
18 understanding what the system is. You represent what's best  
19 in the system.

20 I also want to give an acknowledgment to Mr.  
21 Astolfi because Mr. Astolfi did a brave thing. And the brave  
22 thing that Mr. Astolfi did was to point out the fact that Mr.  
23 Washington's lawyer was drinking on the day of his trial. It  
24 took a lot of courage for Mr. Astolfi to come to this court  
25 on the first day of trial and say there's something remiss

1 here. It took a lot of courage for Mr. Astolfi to go back to  
2 his supervisor, bring her to court and confront defense  
3 counsel with his drinking. That took a lot of courage and I  
4 think Mr. Astolfi has to be acknowledged for that.

5 But I've got to tell you, with the exception of you  
6 and with the exception of Mr. Astolfi's courage in bringing  
7 out the fact of Mr. -- prior defense counsel's intoxication,  
8 this case is the poster child for what is wrong with the  
9 system and why members of our community have no trust in the  
10 system.

11 The fact of the matter is, Judge, is that there was  
12 no cocaine involved in this case, there was no stash house  
13 involved in this case.

14 The only people who are investigated by ATF in  
15 connection with stash house robberies where scenarios like  
16 this are created are minorities, members of the community who  
17 don't have power, members of the community who don't have  
18 education and that's just not -- that's just not my opinion.  
19 That's the fact that was stated by the ATF agents in this  
20 case who told this Court and the jury that of the 13 stash  
21 house artificial creations that were investigated by ATF 12  
22 involved African Americans and one involved a Hispanic.

23 So the fact of the matter is is that is there any  
24 wonder why African Americans and Hispanics might not have  
25 confidence in a system that targets them? I don't want to

1 get into the whole sociological aspect of it, but the fact of  
2 the matter is, Your Honor, is that whether or not it deals  
3 with crack cocaine and the mass incarceration that flowed  
4 from a 10-to-1 ratio or 100-to-1 ratio of crack to power  
5 cocaine, there has been a mass incarceration and a focus on  
6 minority members of the community that give them reason to  
7 mistrust the system and this case is emblematic of that.

8 Ms. Clover is right. There are real drug dealers  
9 out there on the street. There are real robbers out there on  
10 the street. ATF should be devoting its resources to getting  
11 the individuals who actually go out and without any  
12 suggestion or without any contrivance actually commit stash  
13 house robberies.

14 When Ms. Clover tells this Court that Mr.  
15 Washington said, no, she's supported by the trial transcript  
16 -- she's supported by the transcript in this case where I  
17 direct this Court to page 11 of the March 4th, 2013  
18 transcript where Mr. Washington says, I can get it moved, yo,  
19 but I don't like fucking with niggers. See, I don't fuck  
20 with coke. What is he telling the agent? He's not a drug  
21 dealer.

22 Now, yes, he was convicted of attempted possession  
23 with the intent to distribute 10 kilograms -- five kilograms  
24 or more of cocaine. Yes, he was convicted of conspiracy.  
25 Something that was contrived by the Government where he says

1 he is not involved in it.

2 Is it true that there were words that were said  
3 that belied that? Yes, it is true.

4 Is it technically a crime to talk about that? Yes.

5 But, Your Honor, is it any wonder why members of  
6 our community don't have confidence in the system where they  
7 hear Mr. Washington on tape say I don't fuck with coke?

8 We have a system where fortunately lawyers are  
9 appointed to represent people who are charged with crimes,  
10 but in this case the lawyer was drinking.

11 The lawyer visited his client on a case that was  
12 looking at a mandatory 20 years in jail, an enormous amount  
13 in jail, and he came to court the first day with alcohol on  
14 his breath.

15 Would prepare the case by going down to see him at  
16 the FDC on three occasions with alcohol on his breath and  
17 just jesting, well, you know, there's nothing wrong with  
18 taking a shot at the end of the day.

19 Or telling the supervisor of Mr. Astolfi, yeah, I  
20 had one at lunch.

21 What kind of system is that? Is there any wonder  
22 why people don't have confidence in the system? Or have any  
23 confidence in a system where the lawyer who has been drinking  
24 brings out from the agent that this man has a prior drug  
25 conviction?

1           The Government argues in its memorandum that that  
2       was a brilliant move. Why? Because if he had a prior  
3       conviction -- prior drug conviction that means he didn't have  
4       a crime of violence, so, therefore, it was the right move  
5       with respect to the Hobbs Act prosecution.

6           But that brings me to the second point. The fact  
7       of the matter is is that it's the drug statute that is  
8       driving this case, not the Hobbs Act statute.

9           He's looking at a mandatory minimum sentence of 20  
10      years in jail based upon the drug statutes and only a maximum  
11      of 20 years in jail with respect to the Hobbs Act.

12          So as a practical matter the most disastrous thing  
13      the other lawyer could have done is to bring out the fact  
14      that Mr. Washington had a prior drug conviction which could  
15      only be used by the jury to show propensity on behalf of Mr.  
16      Washington to be involved in drugs and sure enough the man  
17      was convicted of two drug counts and now faces 20 years in  
18      jail minimum.

19          What does that tell you about how certain members  
20      of our community feel about the system? I dare say it only  
21      justifies and verifies their skepticism of fairness in the  
22      system with respect to them.

23          It's a disgrace that this man had to go to trial  
24      with a lawyer who was drinking. Now, he might not have been  
25      drunk and maybe there wasn't this prejudice that was

1 established, but it sure doesn't make the system look good,  
2 does it? And now he's facing a Guideline sentence of 30 to  
3 life. 30 years to life.

4 And the thing that is so -- another example of what  
5 is wrong here is that one of the predicate offenses that the  
6 Court told this community is that Mr. Washington is looking  
7 at 30 to life because he's a career offender by virtue of  
8 that aggravated assault conviction.

9 The members of this community should know that Mr.  
10 Washington was convicted of felony in the second degree  
11 aggravated assault which is less serious than felony of the  
12 first degree aggravated assault.

13 The members of this community should know that if  
14 Mr. Washington had been convicted of felony of the first  
15 degree aggravated assault he would not be facing a career  
16 offender designation.

17 It is only because he was convicted of a less  
18 severe offense of felony second degree aggravated assault  
19 which does not have a recklessness component to it is he  
20 facing 30 to life. So is it any wonder that the members of  
21 our community don't have trust in the system?

22 THE COURT: I know, Mr. Greenberg, you've -- you've  
23 pointed out in your third supplemental sentencing memorandum  
24 that had he been convicted of the first degree aggravated  
25 assault --

1 MR. GREENBERG: He would not be a career offender.

2 THE COURT: -- he would not be a career offender  
3 and his Guideline then would be 235 to 293 months.

4 MR. GREENBERG: Correct.

5 THE COURT: Which would be a Criminal History  
6 Category V and an offense level of 34, but go ahead.

7 MR. GREENBERG: You're absolutely right.

8 Not only that, Your Honor, but who was the leader  
9 of this particular enterprise? It was Dwight Berry. And  
10 what did Dwight Berry get?

11 Dwight Berry was the one who was in contact with  
12 the confidential informant.

13 Dwight Berry was the one who was in contact in  
14 negotiating with the undercover agent.

15 Dwight Berry was the one who supplied the weapons  
16 for the particular day in question, March 15th.

17 Dwight Berry was a ring leader.

18 And what did he get? This Court gave him 15 years  
19 in jail.

20 This man's looking at 30 to life.

21 Is there any wonder why our community questions the  
22 legitimacy of the system?

23 Not only that, but every defendant who was  
24 convicted in this case through their plea of guilt was  
25 convicted of a firearm offense, a 924(c) offense, everyone of

1       them, including Mr. Berry.

2               Mr. Washington, by contrast, was acquitted of the  
3       924(c) offense and this Court has already made a  
4       determination on the record that the Government hasn't proven  
5       by a preponderance of the evidence that he knew that there  
6       was a gun in those cars.

7               Now, he's still looking at 30 to life even though  
8       the ring leader in this case who was involved with the guns  
9       and suppling the guns only got 15 years.

10              And I just want to take the time to remind myself  
11       as to what the actual sentence was with Mr. Berry. Mr. Berry  
12       got 180 months incarceration. He got 90 months on Counts 1  
13       through 4 and a consecutive 90 months on Count 5, the 924(c)  
14       count.

15              THE COURT: Say that again.

16              MR. GREENBERG: Mr. Berry got a total of 180 months  
17       in this case. A total of 15 years. Of that 15 years, 90  
18       months or seven a half years was on Counts 1 through 4 and 90  
19       months on Count 5.

20              THE COURT: Again, that was a -- he pled guilty.

21              MR. GREENBERG: He did.

22              THE COURT: He didn't go to trial.

23              MR. GREENBERG: And did not cooperate.

24              THE COURT: He didn't cooperate. And that was a  
25       negotiated guilty plea with the Government. That was an

1       agreed upon sentence.

2               MR. GREENBERG:   And -- and which this --

3               THE COURT:   And the Court has to make a decision in  
4       that under the law as to whether or not it's in the interest  
5       of justice to accept that guilty plea.

6               MR. GREENBERG:   And you decided it was and they  
7       decided in the first instance that that's all this case  
8       warranted with respect to Dwight Berry which was 90 months on  
9       the substantive counts.

10              They're now going to come up and tell you, because  
11      Mr. Henson has already told you he's going to tell you, that  
12      we're looking for 360 months minimum, which is 270 months  
13      more than Mr. Berry got for being the ring leader here. For  
14      being the one with the guns. For being convicted of the  
15      guns. Is it any wonder why members of our community don't  
16      have confidence in the system?

17              Look, you're a man of the law. You heard Ms.  
18      Clover say that she respected you. You heard Ms. Clover be  
19      here and has seen the way you have comported yourself. She  
20      lauded you.

21              You have an opportunity here, Your Honor, to make  
22      sure that the system, even though it deserves indictment in  
23      this case, does not run totally amok.

24              You have a chance to sentence Mr. Washington to 240  
25      months which is the mandatory minimum 20 year sentence.

1           And even I would say to you, Your Honor, that  
2           that's greater than necessary to achieve the purposes of  
3           Section 3553(a) because isn't that what the purpose of  
4           sentence is, to give a sentence that is sufficient, but not  
5           greater than necessary to achieve the purposes of the  
6           Sentencing Act?

7           I just want you to think in the back of your head  
8           when Mr. Henson gets up here and starts swinging for the  
9           fences about sending this man -- man to jail for 30 years  
10          that his office made a decision to send the ring leader of  
11          this jail -- of this -- of this case to jail for only 90  
12          months on the counts of conviction that Mr. Washington was  
13          found guilty of.

14          I say to you, Your Honor, you have a chance to  
15          prevent an egregious -- extra egregious travesty in this case  
16          by sentencing Mr. Washington to any more than 20 years in  
17          jail.

18                 THE COURT:   Mr. Henson.

19                 MR. HENSON:   Your Honor, please.   You've heard two  
20          impassioned arguments and I will not be swinging for the  
21          fences.   I'm asking for a Guideline sentence.

22                 As Your Honor pointed out the Guidelines have  
23          decades of experience behind them.   They've been modified  
24          over time.   They've been correctly calculated in this case  
25          and permit a sentence of life imprisonment.   We are not

1 swinging for the fences.

2 We are asking, as we ordinarily do, in cases in  
3 which the defendant insists on going to trial and the whole  
4 of his conduct is at issue that the Court impose a Guideline  
5 sentence. We're not asking for a life sentence. We're not  
6 asking for a sentence above 360 months.

7 Let me address, first, the nature of the  
8 investigation.

9 My experience too in the justice system goes back  
10 some years. It began in 1968 when I was an intern for the  
11 Law Student Civil Rights Research Council. It has been in  
12 Philadelphia.

13 Since I began observing closely our justice system  
14 we have failed repeatedly to protect the people who are the  
15 victims of home invasions. These are not privileged people.  
16 These are not people who have high degrees. These are people  
17 who are especially vulnerable and a system which has unjust  
18 acquittals or is unable to convict and punish those who  
19 offend against our weakest and least protected is failing and  
20 that is where the civil rights violation is.

21 Those of us with experience in the justice system  
22 on both -- in Philadelphia on both the defense side and  
23 prosecution side and in the agencies have learned over this  
24 time that there is a special difficulty with these home  
25 invasion robberies.

1           We, a decade ago, adopted numerous firearms cases  
2           because local authorities were unable to prove the home  
3           invasion in which the firearms were used.

4           Over time ATF, by the book, has responded to this  
5           inadequacy of our justice system by the investigations, one  
6           of which is before Your Honor and by a series of prosecutions  
7           of home invasions that have been developed in other ways.

8           For example, a number of those were developed  
9           because, unlike Mr. Washington, home invaders, drug stash  
10          house robbers, agree to cooperate and make historical cases  
11          of home invasion robberies in which they participated before  
12          they agree to participate in the sting operations. The  
13          investigation was a righteous one. It was conducted by the  
14          book.

15          I had the opportunity in arguing Whitfield, which  
16          is a Third Circuit case, to consider these stings, to read  
17          all of the cases nationwide.

18          I am proud of what ATF here did. I honor the  
19          agents who were responsible for the investigation. They did  
20          not violate any policy. They did not commit any kind of  
21          invidious discrimination. They undertook the prosecution of  
22          people who had impunity before they began these  
23          investigations.

24          And to accuse Agent Edwards of being a race-based  
25          bigot is a canard and a calumny and it cannot be the basis

1 for sentencing this defendant.

2 You've heard emphasized that this defendant was no  
3 drug dealer. He was involved in this because he was a gun  
4 totter as his criminal record shows and as Berry said.

5 He said Washington has a gun and puts in word.  
6 This is referring to paragraph 14 of the presentence  
7 investigation report.

8 And Washington himself -- himself said, I'm walking  
9 in with my gun out. This man is here because of his  
10 willingness, demonstrated again and again, to use guns in a  
11 violent way.

12 At the age of 21 he was convicted and he's still on  
13 parole for having fired three shots from a firearm at a  
14 complainant.

15 This is not a person who is privileged. This is  
16 not a person who doesn't require the justice system to step  
17 up and provide the protection that she can't afford without  
18 the justice system.

19 He fired three shots at Pamela Jones and he was  
20 still on parole for that. This is how much he learned about  
21 his own responsibility.

22 His aggravated assault conviction, yes, it was an  
23 F2, but what did he did -- do? He had fired a gun which  
24 brought the police to him. He hid the gun in the glove box  
25 and then he attempted to drive over the policeman. He is a

1 career offender in the most just way.

2 And, finally, with 21.5 grams of crack he is armed  
3 as a drug dealer and is convicted of that offense.

4 I understand why the sentence that is required, 240  
5 months, might be considered harsh by those who have love for  
6 this defendant, but he has the advantage of that love and he  
7 has betrayed them just as he betrayed our society and our  
8 justice system by this repeated gun toting criminality.

9 So we have someone who is justly, firmly within the  
10 career offender category. He is not a victim. He stood into  
11 a sting operation because he was known as and had  
12 demonstrated himself to be somebody willing to use a firearm  
13 violently.

14 Finally, all of these things point to a need for  
15 the general deterrent affect of a sentence in this sort of  
16 case because these schemes are so difficult to uncover and  
17 when they are uncovered so difficult to prosecute it is  
18 especially important that the justice system demonstrate by  
19 not a harsh sentence, but a Guideline sentence, that this  
20 conduct will not be tolerated when it is prosecutable.

21 We are asking not for vengeance, not for the  
22 punishment of somebody who is without family support. He  
23 himself, as the presentence investigation shows, commended  
24 his mother for the efforts she made on his behalf to civilize  
25 him and make him someone worthy of respect.

1           He has betrayed his family as well as the justice  
2       system. And the justice system in the investigation and in  
3       Mr. Astolfi's conduct of this prosecution has been by the  
4       book and appropriate and has done nothing that should  
5       mitigate his sentence. Thank you.

6           THE COURT: Mr. Greenberg, do you have anything  
7       further before I address Mr. Washington and ask him if he has  
8       anything to say on his own behalf?

9           MR. GREENBERG: I do not, Your Honor.

10          THE COURT: All right. Mr. Washington, do you have  
11       anything you want to say to the Court before I sentence you?

12          THE DEFENDANT: Yes.

13          (Pause)

14          MR. GREENBERG: Your Honor, before -- the answer is  
15       I do have something I'd like to add and then Mr. Washington  
16       can allocute.

17               As the Court may know there is a case in front of  
18       the United States Supreme Court called the Taylor case and  
19       that case involves whether or not in a Hobbs Act prosecution  
20       stash house robberies would qualify to meet the threshold for  
21       affecting interstate commerce. That case has not yet been  
22       decided.

23               Whatever that case -- impact has on Mr.  
24       Washington's case we just wanted to -- the Court to know that  
25       that case is out there. It may or may not have an impact on

1 Mr. Washington's case. He wants to avoid a situation where  
2 it might be him not mentioning it to the Court might waive  
3 any consideration of it at some future time, so we're just  
4 bringing it to the Court's attention.

5 THE COURT: All right. I understand. Okay. But  
6 until the U.S. Supreme Court makes a decision it's -- it's  
7 not the law, but I understand that that decision is pending.

8 Mr. Washington, I'll hear from you.

9 THE DEFENDANT: Yes.

10 THE COURT: If you could speak into the mike.

11 THE DEFENDANT: I want to apologize to my family  
12 first and foremost, the Courts and the victims that never was  
13 going to be. There was never gonna be a victim in this case.  
14 I'm the victim.

15 And he brought up to the Court's attention about  
16 how many operations that they ran, none of them was White.  
17 None of them.

18 And you only use the minority areas to do these  
19 sting operations. There's not one case in America that you  
20 can say you went to the suburban area and target any of them.  
21 Anybody with a meth lab or any type of pills or anything.  
22 They only came to our neighborhoods.

23 Why is that? He said he wasn't biased. I can't  
24 tell. The numbers show. There's not one White person got  
25 charged for this. I've got 25 -- a motion with 25 White

1 brothers that got wrong robberies, home invasions,  
2 kidnappings. Third Circuit, et cetera. None of them was  
3 targeted. Not none -- none of them. And they're back and  
4 forth in and out of jail.

5 I never robbed nobody in my life. I sold drugs.  
6 And he mentioned Pamela Anderson. That was a made-up case.  
7 I didn't do nothing to her, but it's just a fact that you  
8 think you know me.

9 THE COURT: Was that Pamela Jones?

10 THE DEFENDANT: Pamela Jones. I don't even know  
11 this lady. It wasn't -- I took a deal. I was a kid. 18  
12 months probation. If I shot at her don't you think I would  
13 have went upstate prison for shooting at a female?

14 But he knows me? You don't know me. I didn't hurt  
15 you. I hurt my family. Of course I did. But this case  
16 never was going to be. There was never going to be no drugs  
17 sold. I don't even sell drugs.

18 I do pest control. That's what I do. I don't sell  
19 no drugs. That was a skit. This whole case was a -- it was  
20 a movie skit and they found characters to play.

21 And they paid a confidential informant to go out to  
22 Black neighborhoods and get paid whatever they get and to set  
23 you up for no jail time.

24 Why not set people up with jobs? Why you got to  
25 set people up and take them away for nothing? For nothing

## Statement of the Defendant

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1 that never was going to happen. Berry don't rob nobody.  
2 That other guy, I don't know them other guys, but they don't  
3 rob nobody. They came to -- came to this guy with a \$600 an  
4 hour payout. Who's not going to take it?

5 He mentioned the Whitfield case. A CO jumped on  
6 that case -- his correction officer. He took the bait at a  
7 \$600 an hour payout. Who wouldn't do it when you're broke?  
8 You come from a broke home.

9 I took care of my little sisters and everything  
10 when I was a kid myself too. She ain't mention that part,  
11 but I did by any means.

12 I didn't grow up with no father, but I ain't use  
13 them for no excuse. I was a man when I was 13-years-old.

14 When I went upstate prison I never got in trouble.  
15 Had a thousand certificates. No write-ups. No nothing.

16 Since I've been in FDC 39 months no write-ups.  
17 Never been in the hole. Never seen a hole in my life since  
18 I've been incarcerated.

19 I made this decision to take care of my family, but  
20 you see nothing was to happen.

21 Judge Irenas, Third Circuit, he passed, may he rest  
22 in peace. He sentenced somebody I know, a friend of mine,  
23 Terrence Hardy, eight years. He was a career offender. 360  
24 months to life they all -- they was trying to give him. He  
25 went to trial. No 924(c) or 922 (g). He won the same charge

## Statement of the Defendant

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1 as me. Record way worse than mine. He got eight years.  
2 Eight years imprisonment. Third Circuit.

3 THE COURT: Did he have the drug convictions?

4 THE DEFENDANT: Yes, he did.

5 THE COURT: With mandatory minimum?

6 THE DEFENDANT: It's right here.

7 THE COURT: With mandatory minimum?

8 THE DEFENDANT: Yes. He sentenced him to eight  
9 year imprisonment. Same case. Same scenario. Only thing  
10 they had a White CI instead of a Black one on their case and  
11 that was in Jersey.

12 I'm pretty sure you seen the -- and I sent you this  
13 motion which Mr. Jarvis failed to submit anything that I  
14 asked him to do. I asked him to put in a sentence on  
15 entrapment. The jury instructions. He never put them in.  
16 He did nothing I asked him to do.

17 I sent him stuff and he would bring it to me and  
18 open it in front of me in the FDC. He never was going over  
19 my case.

20 Somebody else just fired him that had -- that had  
21 him too. He got the drinking problem. They just took him  
22 off the case. He messed my case up.

23 I wanted to get on the stand, but he opened the  
24 door already when he brung up my drug history, so he let the  
25 jury know that I had a drug conviction, so it basically made

1 me look like I still sell drugs.

2 Then he brought up the fact that Rock, the CI that  
3 didn't come to testify, something happened to him and he knew  
4 that, but he brung it to the jury attention that he was shot  
5 at. He was shot at. I'm in prison. He been shot at, so his  
6 family moved again and they're getting threats. He made it  
7 look like it came from me when he set up at least 10 other  
8 crowds, so he made me look bad in court.

9 I ain't the bad guy in this. I did choose to  
10 cooperate and -- and take -- partake in a crime that wasn't  
11 going to happen, but when I said that I don't do robberies or  
12 sell drugs they were supposed to let me go right there.

13 And they made a -- he made a -- the UC made a call  
14 and asked Muff, what's up with the tall boy? He don't do  
15 robberies? No, he don't do no robbery put in word.

16 Berry is younger than me. I grew up with his  
17 brothers and his cousins. He never seen me do nothing or  
18 even hold a gun in his life, so that was -- he was just  
19 talking so he can get the job. That's all he was doing.  
20 That's all everybody on the case was doing. They was hungry.  
21 Every last one. Even the one's who cooperated. They don't  
22 know me, but they cooperated so they could less time as they  
23 can.

24 And here I go. They threatened me to take a deal  
25 or they was going to 851 me, so that's why I'm a career --

1       that's why they put the career offender in -- in the motion  
2       because I operated my rights and went to trial.

3               So I just want to say at the end of the day I can't  
4       clean up spilled milk, but there's going to be a second  
5       trial. That's all I have to say.

6               THE COURT: Does anyone else have anything they  
7       want to put on the record at this point? Mr. Henson?

8               MR. HENSON: No, Your Honor. Thank you.

9               THE COURT: Mr. Greenberg?

10              MR. GREENBERG: No, Your Honor.

11              THE COURT: All right. The Court will adopt the  
12       factual statements and the new Guideline findings and the  
13       Guideline applications as contained in the presentence report  
14       and take all that information into account in determining  
15       what's an appropriate sentence.

16              I've also considered the arguments of counsel which  
17       have been, both sides, quite eloquent, quite compelling.

18              I've considered what Mr. Washington has just said  
19       and the testimony of his mother and sister who were also  
20       quite eloquent and certainly speaking from the heart.

21              And I also note the presence of so many relatives  
22       of Mr. Washington and friends in court, his stepfather too.

23              And it seems to me, Mr. Washington, despite the  
24       condition he finds himself in, is -- certainly has a lot to  
25       be thankful for.

1 I've seen many cases where people who are in this  
2 situation the family doesn't give the kind of support that  
3 one deserves and everyone is to be commended here for being  
4 so supportive of Mr. Washington.

5 And I realize, and I know Mr. Washington realizes,  
6 that despite what he says about how he was prosecuted just by  
7 showing up he let his family down to some extent and you  
8 didn't want to let your family down and you didn't want to  
9 let your mother down.

10 And certainly your sister has been a rock in your  
11 family that is amazingly commendable -- quite commendable.

12 So I -- what I see in front of me are a lot of good  
13 people that have questions, perhaps can't understand what's  
14 going on to some extent and it's -- it's understandable.

15 I will say that this case does involve an element  
16 of distribution of drugs. As much as it appears more to be  
17 about a robbery or a home invasion it does involve an element  
18 of distribution of drugs certainly from the evidence I've  
19 heard in this case and I presided at the trial.

20 Mr. Washington would know that had there been drugs  
21 and had it been seized as a result of this robbery that those  
22 drugs would have been sold to somebody else perhaps in  
23 quantities and those drugs would have been distributed on the  
24 streets of our communities -- Philadelphia and other  
25 communities.

1           And we all know, and it's well documented, as to  
2           the affects of drugs on society. Families are broken, people  
3           are destroyed, lives are destroyed when people get addicted  
4           and abuse drugs.

5           I know I see a lot of wonderful people in this  
6           courtroom perhaps in their teenage years or in their 20's,  
7           maybe in their 30's. I know Mr. Washington would not want to  
8           see one person in this courtroom become a drug abuser. I  
9           know there's some history of drug abuse in his family. It --  
10          he knows first -- firsthand what the affects of drug abuse  
11          are.

12          But yet I get many cases in front of me where  
13          defendants are involved in the distribution of illegal,  
14          illicit drugs. They wouldn't want their own family to -- to  
15          use it, but it's okay for it to be distributed on the streets  
16          to other people and other families, even to teenagers and who  
17          know who else.

18          Drugs are a very serious problem in this society.  
19          We haven't solved it by any means. I don't know what the  
20          future holds about it, but certainly to obtain drugs for re-  
21          distribution through robbery of other drug dealers who might  
22          have a stash house is not something that law enforcement --  
23          you've heard Mr. Henson speak -- will accept.

24          Certainly there's arguments on both sides of the  
25          equation as to whether or not these kinds of sting operations

1 are acceptable. As a Judge I have to follow the law. I'm  
2 not here to sit in judgment of certain prosecutorial tools.  
3 If people have complaints about that then perhaps coming to  
4 the Executive branch of Government or the Legislative branch  
5 of Government and voicing concerns might be appropriate.

6 As a Judge in a District Court we have -- we have  
7 to follow the law and thus far from my perspective the law  
8 has allowed the Government -- permitted the Government to  
9 investigate crime using these kinds of sting operations.

10 Mr. Washington walked into it from the evidence  
11 voluntarily despite the -- what was dangling in front of him.  
12 I heard the tape recordings that were made and I heard the  
13 evidence, as did the jury, and the jury returned a verdict.

14 And as a Judge on the trial while I am bound to --  
15 by the jury's verdict, I can't substitute my notion of guilt  
16 or innocence for what the jury has found and the jury has  
17 found that a certain quantity of drugs was involved in this  
18 case and they found Mr. Washington guilty of these crimes.

19 I have done my levelheaded best to follow the law.  
20 If there are disagreements, obviously, Mr. Washington can  
21 pursue appeals to the United States Court of Appeals for the  
22 Third Circuit which we all expect, but I've done my  
23 levelheaded best to make sure he gets a fair trial and that  
24 the law is followed.

25 Be that as it may, I want to refer and do what I

1 have to do and that is to consider the -- the factors that I  
2 have to consider.

3 I have to consider the nature and circumstances of  
4 the offense. This offense involved four individuals who  
5 conspired to rob what they believed would be a location where  
6 quantities of drugs would be found.

7 On the tape recordings they obviously knew they'd  
8 have to use drugs (sic) to perpetrate the crime because the  
9 persons in the stash house purportedly had firearms too to  
10 protect what they were holding. This is a serious offense  
11 under any circumstances and I have to consider that factor.

12 I also have to consider the history and  
13 characteristics of Mr. Washington. Mr. Washington is 36  
14 years of age.

15 I accept what his sister said so eloquently about  
16 their upbringing. Based upon what's in the presentence  
17 report she has described the family situation accurately.

18 I -- I realize the deprivations that Mr. Washington  
19 had growing up, as did his two sisters and a brother, and  
20 certainly all of us wish it were otherwise. People should  
21 have loved ones who are there for them, should have the  
22 ability to be afforded a decent education.

23 If they're having a mental or emotional problem  
24 should be able to get the kind of professional help that  
25 would guide them so that they can achieve educational,

1 occupational, statuses in life so that they can be productive  
2 citizens. Everyone should be a productive citizen and,  
3 unfortunately, in some situations that doesn't happen.

4 Certainly from what I can say -- see Mr. Washington  
5 is a classic case study on how a person can go wrong and not  
6 respect the law based upon the fact that his father I believe  
7 was shot and killed at a very early age in his life or  
8 probably I think before he was even born if I'm not mistaken,  
9 but I could be wrong on that regard, but it was in his very  
10 young life.

11 His mother who I really credit for having the  
12 emotional makeup to come before the Court today to speak on  
13 his behalf her -- herself has a history of abusing drugs.

14 Certainly his sister moved out of the house in  
15 order be in a better environment and Mr. Washington had  
16 tremendous responsibility for his family even as young as age  
17 13.

18 Mr. Washington, I -- I realize to a large extent  
19 what influenced you, what brought you here, but I do note  
20 that there are so many loved ones here that it's just a -- a  
21 very wonderful thing for a Judge to see.

22 And as far as I'm concerned I can only hope that in  
23 the future when you're released from custody that your being  
24 -- wanting to be with the loved ones given what you've been  
25 through not only in this case, but in many other cases in the

1 criminal justice system, will compel you not to violate the  
2 law again, but that's going to be up to you -- that's going  
3 to be up to you.

4 You did not have to be where you were on the date  
5 of your arrest and on prior occasions when you went with Mr.  
6 Berry. You made your own choice to be there and those are  
7 the choices that have resulted in you being in court today  
8 for sentencing.

9 I do know that you have four prior convictions and  
10 you have served -- served time in the past.

11 You have a revocation of probation at -- at age 21  
12 that you were sentenced to two to four years imprisonment.

13 Age 23, 12 to 24 months imprisonment.

14 Age 24, three to six years imprisonment.

15 And at the time you committed -- or were involved  
16 in the instant offense you were still on State parole so that  
17 it's difficult to believe that even if I had the authority to  
18 release you tomorrow that the first thing you would probably  
19 try to do was possess a firearm and/or somehow think that by  
20 selling drugs you can put money in your pocket. Actions  
21 speak louder than words.

22 And in this case it's -- as difficult as the  
23 parties here see this conviction there is a danger here that  
24 you would engage in that kind of conduct.

25 The Court notes that you don't have a high school

1 education. I am going to recommend to the United States  
2 Bureau of Prisons that you receive and participate in  
3 whatever programs are available to help you get a GED degree  
4 and take your education further.

5 I'm also going to recommend to the United States  
6 Bureau of Prisons that you get mental health counseling. The  
7 -- somebody said you had some deficit in that regard here  
8 today in court.

9 And I'm most pleased that you took a course in  
10 anger management while you were at the FDC, the Federal  
11 Detention Center, but you can take it another step, notch it  
12 up and try to understand more about yourself and what made  
13 you show up on those occasions in this case and that has  
14 brought you to court today.

15 You didn't report any history of -- of medical  
16 disorders, although you do have an occasion where you were  
17 shot in the right forearm in 1997/1998.

18 And you were involved in a serious motorcycle  
19 accident in 2011.

20 The -- again, I note your -- your presentence  
21 report says you didn't report a history of diagnosed mental  
22 illness or treatment, but I believe it was your sister that  
23 did -- did state you had some mental health deficit that  
24 should be dealt with.

25 I note that there is some indication, not a lot, of

1 abuse of controlled substances. And the presentence report  
2 says while you have not received any drug treatment in the  
3 community you did participate in a therapeutic community  
4 program while incarcerated at Chester County. But I think  
5 you have to take that also a further step and I'm going to  
6 recommend that you participate in the -- any drug treatment  
7 the Bureau of Prisons will afford you.

8 The United States Bureau of Prisons has very  
9 professional counselors in all these areas to try to help  
10 people and -- but the degree of success depends upon the  
11 person who participates in the program. So I'm hoping that  
12 you are motivated, despite what you say about this case and  
13 despite other things that may be going on in his life, to  
14 participate in -- in these programs.

15 You do have a history from what I can see of good  
16 conduct and participating in programs while incarcerated and  
17 I have every -- every indication from that that you will take  
18 it a step further and get whatever counseling is necessary in  
19 the areas I've discussed.

20 The Court also has to take into account other  
21 factors in imposing a sentence sufficient, but not greater  
22 than necessary, to comply with the provisions of the  
23 Sentencing Act.

24 I have to consider the need for the sentence to  
25 reflect the seriousness of the offense. In my opinion to a

1 large extent we're already there with it, 20 year mandatory  
2 minimum, but these offenses are serious and there has to be a  
3 sentence on the robbery counts too.

4 The Court also has to impose a sentence that  
5 promotes respect for the law.

6 For a long time, or at periods in Mr. Washington's  
7 life, he did not respect the law and he was brought to court  
8 and involved in the criminal justice system, but he and  
9 others have to know by the sentence that respect for the law  
10 is required.

11 Also the Court has to consider the need to afford  
12 deterrence not only to Mr. Washington, but to other people --  
13 to deter other people from engaging in the same kind of  
14 conduct.

15 I also have to consider the need to protect the  
16 public from further crimes by the defendant and certainly the  
17 period of incarceration, plus 10 years supervised release,  
18 will achieve that.

19 I also have to consider the need to provide the  
20 defendant with educational, vocational training and other  
21 correctional treatment in the most effective manner and I've  
22 already discussed the kinds of programs I'm going to  
23 recommend to the United States Bureau of Prisons.

24 I also have to consider the kinds of sentences  
25 available.

1 I need to make sure that incarceration, obviously,  
2 is warranted here.

3 And I also have to consider the ranges recommended  
4 in the Sentencing Guidelines. We have Guidelines here of 360  
5 months to life.

6 In my opinion those Guidelines are higher than  
7 would be necessary to impose a sentence sufficient and -- but  
8 not greater than necessary under the circumstances so that a  
9 variance is warranted based upon everything I've learned  
10 about Mr. Washington's family life and the presence of so  
11 many friends and family in court and the support he has and  
12 the letters I've received.

13 And from what I can see his willingness in prison  
14 to engage in programs that would afford him to be a better  
15 person. I think all of that is most commendable.

16 I also have to consider any pertinent policy  
17 statements issued by the Sentencing Commission, but I don't  
18 see any of them applying.

19 And I also have to consider the need to avoid  
20 unwarranted sentence disparities among defendants with  
21 similar records who have been found guilty of similar  
22 conduct. In many ways the Guidelines tell us what those  
23 should be.

24 And I note another reason for a variance and that  
25 is what Mr. Greenberg has brought to my attention with

1 respect to what the Guidelines would be had Mr. Washington  
2 been convicted of first degree aggravated assault the  
3 Guidelines would be lower than they are now. Not  
4 significantly lower, but lower than they are now, but he was  
5 convicted of second degree felony aggravated assault.

6 And I note that there has been no substantive  
7 challenge for what Mr. Greenberg has brought to my attention,  
8 but we do try to treat people fairly under the law and this  
9 is apparently a dichotomy that exists in the law.

10 I also have to consider the need to provide victims  
11 with restitution, but there is no need for that.

12 Having said everything I've said I am prepared to  
13 impose sentence. And, again, I have no choice with respect  
14 to that mandatory minimum sentence.

15 Pursuant to the Sentencing Reform Act of 1984 it is  
16 the judgment of the Court that the defendant, Askia  
17 Washington, is hereby committed to the custody of the Bureau  
18 of Prisons to be in prison for a term of 24 months on each of  
19 Counts 1 and 2 to be served concurrently to each other and a  
20 term of 240 months on each of Counts 3 and 4 to be served  
21 concurrently to each other, but consecutively to the term  
22 imposed on Counts 1 and 2 to produce a total sentence of 244  
23 months.

24 Upon release from imprisonment -- I'm sorry 264  
25 months. Upon release from imprisonment the defendant shall

1 be placed on supervised release for a term of 10 years. This  
2 term consists of three years on each of Counts 1 and 2 and 10  
3 years on each of Counts 3 and 4. All such terms shall be  
4 served concurrently to each other.

5 Within 72 hours of release from the custody of the  
6 Bureau of Prisons the defendant shall report in person to the  
7 Probation Office in the district to which the defendant is  
8 released.

9 While on the supervised release the defendant shall  
10 not commit another Federal, State or local crime.

11 Shall be prohibited from possessing a firearm or  
12 other dangerous device.

13 Shall not possess an illegal controlled substance.

14 And shall comply with the other standard conditions  
15 that have been adopted by this Court.

16 The defendant must submit to one drug test within  
17 15 days of commencement of supervised release and at least  
18 two tests thereafter as determined by the probation officer.

19 The defendant shall cooperate in the collection of  
20 DNA as directed by the probation officer.

21 In addition, the defendant shall comply with the  
22 following special conditions.

23 The defendant shall provide the U.S. Probation  
24 Office with full disclosure of his financial records to  
25 include yearly income tax returns upon the request of the

1 U.S. Probation Office.

2 The defendant shall cooperate with the probation  
3 officer in the investigation of his financial dealings and  
4 shall provide truthful monthly statements of his income.

5 The defendant shall be -- is prohibited from  
6 incurring any new credit card charges or opening additional  
7 lines of credit without the approval of the probation officer  
8 unless the defendant is compliance with a payment schedule  
9 for any fine obligation.

10 The defendant shall not encumber or liquidate  
11 interest in any assets unless it is in direct service of the  
12 fine obligation or otherwise has the express approval of the  
13 Court.

14 It is further ordered that the defendant shall pay  
15 to the United States a fine of \$1,500.

16 The Court finds that the defendant lacks the  
17 ability to pay a fine within the Guideline range. There is a  
18 Guideline range for the fine which is much, much higher. The  
19 fine is due immediately.

20 It is recommended that the defendant participate in  
21 the Bureau of Prisons Inmate Financial Responsibility program  
22 and provide a minimum payment of \$25 per quarter towards the  
23 fine.

24 In the event the fine is not paid prior to the  
25 commencement of supervision the defendant shall satisfy the

1 amount due in monthly installments of not less than \$50 to  
2 commence 30 days after release from confinement --  
3 confinement.

4 The defendant shall notify the United States  
5 Attorney for the district -- this district within 30 days of  
6 any change of mailing address or residence that occurs while  
7 any portion of the fine remains unpaid.

8 It is further ordered that the defendant shall pay  
9 to the United States a total special assessment of \$400 which  
10 shall be due immediately.

11 I'll recommend to the United States Bureau of  
12 Prisons that Mr. Washington be afforded educational  
13 opportunities and -- and drug and mental health treatment.

14 That is the sentence of the Court.

15 I've also considered in terms of a variance the  
16 sentence imposed on Mr. Berry of 15 years and, again, the  
17 other factors that I mentioned here.

18 Is there anything -- any questions about the  
19 sentence of the Court?

20 MR. HENSON: No, Your Honor.

21 MR. GREENBERG: No, Your Honor.

22 THE COURT: All right. Mr. Washington, you have 14  
23 days to appeal the sentence either -- either from today or  
24 when the judgment is filed in your case. The judgment is the  
25 sentence reduced to writing that I just imposed.

1           The -- the -- probably the judgment will be filed  
2   if not today or by tomorrow, so you have 14 days from then to  
3   file -- file the notice of appeal to the United States Court  
4   of Appeals to the Third Circuit.

5           And if you can't afford to pay the filing fee let  
6   the Clerk of the Court know and the Clerk will file the  
7   notice of appeal on your behalf.

8           And, Mr. Greenberg, you remain in the case, so I  
9   don't know whether you'll be filing the notice of appeal.

10          MR. GREENBERG: Your Honor, you were thoughtful  
11   enough to appoint me counsel to represent Mr. Washington  
12   under the Criminal Justice Act. I think my obligation  
13   pursuant to local rules in the Third Circuit requires me to  
14   continue my representation of Mr. Washington.

15          I can assure the Court that consistent with my  
16   responsibilities I will file a notice of appeal within 14  
17   days of the date the judgment is entered.

18          THE COURT: All right. All right. Anything  
19   further?

20          Why don't I do this? Let me -- do you want me to  
21   recommend a place of incarceration?

22          MR. GREENBERG: Your Honor, the answer is yes,  
23   within close proximity to -- in Pennsylvania ideally. I know  
24   the Bureau of Prisons has a policy of incarcerating people  
25   within 500 miles of where they reside, but I think in this

1 particular case I think the recommendation by Your Honor that  
2 maybe the incarceration take place in Pennsylvania would be  
3 that much more helpful.

4 THE COURT: I'll recommend to the U.S. Bureau of  
5 Prisons that Mr. Washington be incarcerated at a Federal  
6 institution as close to the Philadelphia area as possible,  
7 all right, where his home is.

8 THE DEFENDANT: Thanks.

9 THE COURT: Okay.

10 MR. GREENBERG: Yes, Your Honor.

11 THE COURT: All right. Anything further? Ms.  
12 Gallagher wants to point out here's a notice of forfeiture.

13 Is there -- the Government has -- I don't think  
14 anything -- I don't know if anything was filed? But there's  
15 a notice of forfeiture attached to the indictment with  
16 respect to forfeiting the firearms that were seized, the  
17 Hi-Point gauge P45, .45 caliber semi-automatic pistol with  
18 serial numbers given and the Chester Arms revolver, .38  
19 caliber revolver.

20 MR. HENSON: Yes, Your Honor. We would ask for  
21 that order in this case as it's been entered with respect to  
22 each of the defendant's charge.

23 THE COURT: Okay. Is there any objection to the  
24 forfeiture?

25 MR. GREENBERG: No, Your Honor.

1 THE COURT: All right. So why don't you file the  
2 appropriate papers. I'll order the forfeiture of those  
3 firearms. All right.

4 MR. HENSON: Thank you very much.

5 THE COURT: All right. We'll stand in recess.

6 (Proceedings concluded at 12:25 p.m.)

7 \* \* \*

8  
9 C E R T I F I C A T I O N

10  
11  
12 I, Joan Pace, court approved transcriber, certify  
13 that the foregoing is a correct transcript from the official  
14 electronic sound recording of the proceedings in the above-  
15 entitled matter.  
16  
17  
18

19 \_\_\_\_\_ August 12, 2016

20 JOAN PACE

21 DIANA DOMAN TRANSCRIBING, LLC